

# FIDUCIARY BOARD

## Meeting Agenda – Thursday, November 10, 2016

Arizona Supreme Court -1501 West Washington Street

Phoenix, Arizona 85007 - 10:30 A.M. Conference Room 109

General Inquiries Call: 602-452-3378 (Certification and Licensing Division Line)

Members of the Public May Attend Meeting in Person

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For any item listed on the agenda, the Board may vote to go into Executive Session for advice of counsel and/or to discuss records and information exempt by law or rule from public inspection, pursuant to the Arizona Code of Judicial Administration, Code Section 1-202(C).

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**CALL TO ORDER .....***Deborah Primock, Chair*

**1) REVIEW AND APPROVAL OF MINUTES.....***Deborah Primock, Chair*

*1-A: Review, discussion and possible action regarding the regular session minutes of the meeting held on September 8, 2016.*

*1-B: Review, discussion and possible action regarding the executive session minutes of the meeting held on September 8, 2016.*

*1-C: Review, discussion and possible action regarding the regular session minutes of the meeting held on September 23, 2016.*

*1-D: Review, discussion and possible action regarding the executive session minutes of the meeting held on September 23, 2016.*

**2) PENDING COMPLAINTS/RENEWAL OF LICENSURE.....***Division Staff*

*2-A: Review, discussion and possible actions regarding complaint numbers 15-0013 and 15-0014 involving license holders, Mary Jane Condit and Condit & Associates.*

*2-B: Review, discussion and possible actions regarding complaint number 16-0003:*  
*i. Involving license holder, Philip DeVico; and*  
*ii. Renewal of licensure involving Philip DeVico.*

*2-C: Review, discussion and possible action regarding complaint number 16-0002, involving license holder, Professional Community Services.*

**3) INITIAL LICENSURE AND ELIGIBILITY.....Division Staff**

*3-A: Review, discussion and possible action regarding the following applications for initial individual licensure:*

1. Patrick Moore
2. Shawn Garner
3. Reliance Fiduciary, LLC
4. Margaret Getchell
5. Taryn Hoover

*3-B: Review, discussion and possible action regarding proposed settlement agreement concerning denial of licensure for Matthew Dana.*

**4) RENEWAL OF LICENSURE APPLICATIONS..... Division Staff**

*4-A: Review, discussion and possible action regarding the following applications for renewal of individual licensure:*

1. Lyndi Anderson
2. Denise Baldwin
3. Mary Belasco
4. Janice Bernardini
5. Leigh Bernstein
6. Jeanette Bloss
7. Julianne Brogna
8. Benjamin Burnside
9. Phyllis Cornell
10. Marshall Coyne
11. Thomas Curti
12. Janette Dominguez
13. Frank Escalante
14. Patricia Flores
15. Glenn Gloria
16. Philip Grant
17. Jessica Gregg
18. Linda Hamilton
19. Louise Harter
20. Marshall Herron
21. Alexander Hobson
22. William Howsden
23. Annette Jones
24. Rick Kelley
25. Yolanda Kennedy
26. Carol Kopsco
27. Laurie Kuzdal

28. Edward Laber
29. Teresa Lancaster
30. Gary McGaha
31. Debra McKee
32. Peggy McMahon
33. Debra McPherson
34. Jacquelyne Mingle
35. Mark Mitchell
36. Nancy Mueller
37. Mirna Oldham
38. Martelle Olsen
39. David Osollo
40. Sandra Paz
41. Ana Perez-Arrieta
42. Thomas Peterson III
43. Mark Ralles
44. Carrie Rednour
45. Eileen Rogers
46. Elizabeth Rollings
47. Mark Rubin
48. Peter Santini
49. Ranae Settle
50. Carol Severyn
51. Denice Shepherd
52. Jamie Singer
53. Rhonda Stone
54. Katherine Trojahn
55. Peggy Van Norman
56. Patricia Weiss
57. F.M. Westra
58. Craig Winsom
59. Henry Wood
60. Jessica Zachary
61. Lori Lashley

**5) LICENSURE AND ELIGIBILITY.....*Division Staff***

*5-A: Review, discussion and possible action regarding request for placement on Active Status from Cathy Simons.*

**6) ADMINISTRATIVE ISSUES.....*Division Staff***

CALL TO THE PUBLIC ..... *Deborah Primock, Chair*

ADJOURN ..... *Deborah Primock, Chair*

**FIDUCIARY BOARD**  
**Agenda Summary – Thursday, November 10, 2016**

**1) REVIEW AND APPROVAL OF MINUTES**

*I-A: Review, discussion, and possible action regarding the regular session minutes of the meeting held on September 8, 2016.*

A draft of the regular session minutes for the meeting of September 8, 2016, is attached for the Board's review and consideration.

**FIDUCIARY BOARD**  
**Agenda Summary – Thursday, November 10, 2016**

**1) REVIEW AND APPROVAL OF MINUTES**

*1-B: Review, discussion, and possible action regarding the executive session minutes of the meeting held on September 8, 2016.*

A draft of the executive session minutes for the meeting of September 8, 2016, is attached for the Board's review and consideration.

**FIDUCIARY BOARD**  
**Agenda Summary – Thursday, November 10, 2016**

**1) REVIEW AND APPROVAL OF MINUTES**

*1-C: Review, discussion, and possible action regarding the regular session minutes of the meeting held on September 23, 2016.*

A draft of the regular session minutes for the meeting of September 23, 2016, is attached for the Board's review and consideration.

**FIDUCIARY BOARD**  
**Agenda Summary – Thursday, November 10, 2016**

**1) REVIEW AND APPROVAL OF MINUTES**

*I-D: Review, discussion, and possible action regarding the executive session minutes of the meeting held on September 23, 2016.*

A draft of the executive session minutes for the meeting of September 23, 2016, is attached for the Board's review and consideration.



# FIDUCIARY BOARD

## Agenda Summary – Thursday, November 10, 2016

### 2) PENDING COMPLAINTS/RENEWAL OF LICENSURE

*2-A: Review, discussion and possible actions regarding complaint numbers 15-0013 and 15-0014 involving license holders, Mary Jane Condit and Condit & Associates.*

Mary Jane Condit was appointed as Successor Trustee to the Samuel Green family trust on June 10, 2014. Condit's main responsibilities were to administer and distribute trust assets upon the passing of Mr. Green. The complainant in this case, one of the beneficiaries, alleged Condit took too long for the distributions, held an excessive amount back for "tax" purposes and tried to force him to sign an inappropriate release form.

Division investigated the matter and concluded there was insufficient evidence to determine whether the time frame for completion was appropriate given the circumstances and whether the monies held back for potential IRS liabilities was also appropriate. A review of the release language, however, does indicate that Condit modified the release language in a manner to cause it to describe a full distribution of all Trust assets rather than a partial distribution. The form also granted a full release of liability for Condit and Associates even though the Trust had not yet been closed. As described in allegation 2, this release language was used at the same time that at least one beneficiary was complaining about the amount of funds that Condit was holding in reserve for future tax liability and payments to Condit and Associates. Condit allowed the complaining beneficiary to receive the distribution without signing the form.

By failing to prepare proper release and receipt documents, Condit failed to "exercise the degree or care, skill and proficiency commonly exercised by ordinary skillful, careful and prudent professional certificate holders" per ACJA § 7-201 (H)(6)(k)(7).

#### **Recommendation:**

Staff recommends that the Board accept the determination of the Probable Cause Evaluator and dismiss Allegations 1 and 2 and find that probable cause exists as to Allegation 3 and issue a Letter of Concern.

# FIDUCIARY BOARD

## Agenda Summary – Thursday, November 10, 2016

### 2) PENDING COMPLAINTS/RENEWAL OF LICENSURE

- 2-B: *Review, discussion and possible actions regarding complaint number 16-0003:*
- i. Involving license holder, Philip DeVico; and*
  - ii. Renewal of licensure involving Philip DeVico.*

A medical social worker, with knowledge of Complainant's financial difficulties, contacted Philip DeVico regarding a possible referral for payee representative services. After meeting with Complainant and the referring social worker, DeVico realized that payee representative services were inappropriate because Complainant was not receiving social security benefits. He said he felt sorry for Complainant given her pressing circumstances and DeVico agreed to assist her as a "public service" to her and that he was functioning in a consultative role.

By way of background, Complainant's husband died in 2011 and, per his holographic Will, bequeathed the residence/property to his three adult daughters with the provision that Complainant could reside in the home as long as she wished but that she was financially responsible for maintenance of the property, utility bills, and property taxes. Complainant receives a small monthly pension from England but the amount is minimal and does not cover her expenses. Following her husband's death, Complainant received \$10,000.00 from the estate and she used the money to sustain herself and maintain the household as needed. After that money was exhausted, Complainant was unable to continue with the upkeep of the home and she failed to pay the property taxes for one year. The State was set to seize and sell the property because of the arrears in taxes.

In his efforts to assist in this matter, DeVico said he consulted with an attorney friend regarding applicable sections of the Arizona Revised Statutes involving spousal allowance in estate matters. DeVico believed that Complainant was entitled to additional money from the estate. In addition, DeVico communicated with two other community professionals including a case manager and the attorney who represented one of the daughters, who was appointed personal representative, in the probate of the estate. DeVico provided information to Complainant including the pertinent sections of the A.R.S. along with his recommendation to Complainant that she consult with an attorney to determine how to best proceed with estate matters going forward.

Complainant and her case manager stated they were disappointed with DeVico because he had either promised or otherwise gave the impression that he would help Complainant get the additional money from the estate to which she was or may have been entitled.

There may have been some misperception regarding DeVico's role and purpose as well as confusion with respective expectations of what he was going to and could do.

Although Complainant placed her confidence and trust in DeVico regarding him assisting her with her financial predicament, the Division did not find evidence that DeVico had a fiduciary relationship with Complainant. No evidence was found that DeVico was ever compensated for

his assistance or that he was operating under any type of agreement, power of attorney, appointment or any authority which would have established a duty of care obligating DoVico professionally and ethically.

**Recommendation:**

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Philip DoVico has not committed the alleged act(s) of misconduct as detailed in the Investigation Summary and Allegation Analysis Report in complaint number 16-0003.

It is further recommended the Board dismiss complaint number 16-0003.

**Renewal of licensure:**

Based on the recommendation regarding the aforementioned complaint number, it is recommended to grant renewal of licensure for Philip DoVico.

# FIDUCIARY BOARD

## Agenda Summary – Thursday, November 10, 2016

### 2) PENDING COMPLAINTS/RENEWAL OF LICENSURE

*2-C: Review, discussion and possible actions regarding complaint number 16-0002, involving license holder, Professional Community Services.*

Complainant, brother of Decedent, Dr. Mohamed Ragheb, alleged Professional Community Services, Inc. (“PCS”), under false pretenses, immediately after Dr. Ragheb’s death, obtained keys to his house, entered the home, stole documents, and removed valuable items. Complainant further alleged PCS filed a deliberately misleading petition in Superior Court and that, once Court-appointed, failed to secure the estate, did not pay bills and did not complete an estate inventory. Complainant also accused PCS of breaching its fiduciary duty by making no effort to inform beneficiaries and family of Dr. Ragheb’s death.

By way of background, Dr. Ragheb nominated PCS as agent under medical and financial powers of attorney in 1995. PCS had no relationship with Dr. Ragheb from 1995 until three days prior to his death on March 19, 2015. PCS acknowledged that it never acted pursuant to the Financial and Medical powers of attorney and that any powers under the powers of attorney terminated upon Dr. Ragheb’s death.

Immediately following Dr. Ragheb’s death, PCS assumed responsibility for the estate by taking possession and control of Decedent’s house keys and garage remotes, property including estate planning and financial documents, and valuable jewelry and other items. PCS also entered Dr. Ragheb’s home on four occasions after his death. Moreover, immediately following Dr. Ragheb’s death, PCS or its attorney initiated contact with the beneficiaries of Dr. Ragheb’s Trust in efforts to encourage the entitled beneficiaries to nominate a Successor Trustee and PCS offered to serve as Successor Trustee. In addition, shortly after Dr. Ragheb’s passing, PCS had his mail forwarded to PCS. The fiduciary divulged that after several months “when we got several of the same letters...we started getting nervous,” PCS opened his mail.

It is undisputed that upon Dr. Ragheb’s death PCS took possession and control of his property. PCS acknowledged it had no authority over the property when it took possession and control of the property.

On November 2, 2015, PCS, by and through counsel, filed a Petition to be appointed Special Administrator and Successor Trustee. Letters were issued on or about December 17, 2015.

The resolution of this allegation revolves around how long a licensed fiduciary without real or apparent authority should exercise control over a decedent’s property without seeking and obtaining authority from the court. In the instant situation, Dr. Ragheb died on March 19, 2015, and PCS began exercising control on that date or shortly thereafter. PCS did not seek judicial authority to control the property for eight (8) months, in November 2015.

While it seems reasonable that PCS should take some steps to protect and preserve Dr. Ragheb's property, the Division has found no legal obligation to do so. Regardless of whether a licensed fiduciary has such an obligation when there is no fiduciary relationship with the deceased, it seems that becoming a volunteer and taking steps to protect the property should not be discouraged. However, in this case, PCS took and maintained possession of the property for eight (8) months prior to seeking authority to take such actions.

**Recommendation:**

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Audrey Hanks and Professional Community Services have not committed the alleged act(s) of misconduct as detailed in Allegations 2, 3 and 4 of the Investigation Summary and Allegation Analysis Report in complaint number 16-0002.

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Audrey Hanks and Professional Community Services have committed the alleged act(s) of misconduct as detailed in Allegation 1 of the Investigation Summary and Allegation Analysis Report in complaint number 16-0002.

It is recommended the Board enter a finding grounds for formal disciplinary action exists pursuant to Arizona Code of Judicial Administration ("ACJA") § 7-201(H)(6)(a) for act(s) of misconduct involving ACJA §§ 7-201(H)(6)(a) and (K)(3), 7-202(J)(1)(a)(b), and A.R.S. §§ 13-1504, 13-1802(A)(1), 13—3003 by taking and maintaining possession and control of property and opening mail for up to eight months prior to seeking proper authority for the actions.

It is further recommended the Board issue a Censure.

# **FIDUCIARY BOARD**

## **Agenda Summary – Thursday, November 10, 2016**

### **3) INITIAL LICENSURE AND ELIGIBILITY**

*3-A: Review, discussion and possible action regarding the following applications for initial individual or business entity licensure:*

The following applicants for individual or business entity fiduciary licensure have submitted complete applications demonstrating that they meet the minimum eligibility requirements for licensure. No information has been presented or obtained during the background check which precludes licensure and all applicants have completed the required fiduciary professional training. It is recommended the Board grant initial fiduciary licensure to:

1. Patrick Moore
2. Shawn Garner
3. Reliance Fiduciary, LLC

4. Margaret Getchell applied for individual fiduciary licensure and has submitted a complete application demonstrating she meets the minimum eligibility requirements for licensure and has completed the required fiduciary professional training. Ms. Getchell disclosed that she was involved in several civil cases including a child support case and a homeowner's association case concerning fees. Ms. Getchell also disclosed a termination in 2011, in which her employer terminated her for using a racial slur. Ms. Getchell denies the use of a racial slur, but admits to using inappropriate language. Ms. Getchell states she muttered the inappropriate language under her breath, while in the vicinity of her cubicle. Ms. Getchell also stated that she was working in a highly stressful work environment and expressed remorse on her choice of words and would have approached things differently if put in the same situation again. Ms. Getchell also disclosed being disciplined by a subsequent employer for raising her voice to her supervisor concerning the supervisor's performance. This discipline resulted in a corrective action plan.

Staff recommends that the Board grant initial licensure as a Fiduciary to Margaret Getchell with cautionary language, emphasizing the importance of not utilizing inappropriate language in a professional setting.

5. Taryn Hoover applied for individual fiduciary licensure and has submitted a complete application demonstrating she meets the minimum eligibility requirements for licensure and has completed the required fiduciary professional training. Ms. Hoover disclosed, (i) shoplifting when she was 14, (ii) a curfew violation when she was 17, (iii) a termination from a humanitarian organization and (iv) a domestic violence arrest. According to Hoover, the termination was for asking a volunteer worker (also a major donor) to be quiet during the OSHA recital. As for the domestic violence, according to Ms. Hoover and to police documentation, Ms. Hoover slapped her boyfriend. The court dismissed the case when the boyfriend failed to appear. Staff interviewed Ms. Hoover and found that she expressed remorse and has voluntarily taken

steps to address any issues. Staff also found Ms. Hoover to be forthcoming about the event and could find no other history of such behavior. The recency of the event and the fact that it happened a year into her training for becoming a Fiduciary gives Division concern.

Staff will make a recommendation at the Board meeting.

# **FIDUCIARY BOARD**

**Agenda Summary – Thursday, November 10, 2016**

## **3) INITIAL LICENSURE AND ELIGIBILITY**

*3-B: Review, discussion and possible action regarding proposed settlement agreement concerning denial of licensure for Matthew Dana.*

Staff will provide information to the Board.



# **FIDUCIARY BOARD**

## **Agenda Summary – Thursday, November 10, 2016**

### **4) RENEWAL OF LICENSURE APPLICATIONS**

*4-A: Review, discussion and possible action regarding the following applications for renewal of individual licensure:*

The following individual license holders have submitted applications for renewal of standard licensure. The applications are complete, no information has been presented during a background review which is contrary to standard licensure being granted and the license holders have demonstrated they meet the minimum eligibility requirements for standard licensure. It is recommended renewal of standard licensure be granted to the following individuals:

1. Lyndi Anderson
2. Denise Baldwin
3. Mary Belasco
4. Janice Bernardini
5. Leigh Bernstein
6. Jeanette Bloss
7. Julianne Brogna
8. Benjamin Burnside
9. Phyllis Cornell
10. Marshall Coyne
11. Thomas Curti
12. Janette Dominguez
13. Frank Escalante
14. Patricia Flores
15. Glenn Gloria
16. Philip Grant
17. Jessica Gregg
18. Linda Hamilton
19. Louise Harter
20. Marshall Herron
21. Alexander Hobson
22. William Howsden
23. Annette Jones
24. Rick Kelley
25. Yolanda Kennedy
26. Carol Kopsco
27. Laurie Kuzdal
28. Edward Laber
29. Teresa Lancaster

30. Gary McGaha
31. Debra McKee
32. Peggy McMahon
33. Debra McPherson
34. Jacquelyne Mingle
35. Mark Mitchell
36. Nancy Mueller
37. Mirna Oldham
38. Martelle Olsen
39. David Osollo
40. Sandra Paz
41. Ana Perez-Arrieta
42. Thomas Peterson III
43. Mark Ralles
44. Carrie Rednour
45. Eileen Rogers
46. Elizabeth Rollings
47. Mark Rubin
48. Peter Santini
49. Ranae Settle
50. Carol Severyn
51. Denice Shepherd
52. Jamie Singer
53. Rhonda Stone
54. Katherine Trojahn
55. Peggy Van Norman
56. Patricia Weiss
57. F.M. Westra
58. Craig Winsom
59. Henry Wood
60. Jessica Zachary

61. Lori Lashley has met the minimum standard for her renewal as a fiduciary. Ms. Lashley failed to disclose a civil superior court case regarding a traffic accident in which she listed as a plaintiff. The case has since been dismissed with prejudice. Ms. Lashley stated "As for why this case was not disclosed upon my renewal application, to be honest, I just didn't think of it. I'm not sure if it was because it had already been behind me for a good 6 months or if it was because it was simply a motor vehicle accident, but I honestly had just forgotten about it. My mind was thinking along (sic) of the lines anything relating to my work as a fiduciary."

Division recommends approval of Fiduciary Renewal Licensure for Lori Lashley with the following Non-Disclosure Language:

*The Fiduciary Board ("Board") has concluded its review of your application and determined you have satisfied the eligibility requirements for renewal of licensure. Although the Board is granting you renewal, the Board members have concerns regarding the failure to disclose <insert failure of disclosure>. Lack of diligence is not a quality embraced by the Board or your colleagues in the profession, and may jeopardize your success. The Board and the Division place the highest priority on honesty and candor. Your failure to disclose information on future applications may result in denial of your renewal of licensure or disciplinary action.*

# FIDUCIARY BOARD

## Agenda Summary – Thursday, November 10, 2016

### 5) LICENSURE AND ELIGIBILITY

5-A: *Review, discussion and possible action regarding request for placement on Active Status from Cathy Simons.*

Ms. Simons was placed Inactive by the Board on July 10, 2014. On September 19, 2016, Ms. Simons submitted a request for her license to be placed on Active Status.

Staff has confirmed there are no pending complaints filed against Ms. Simons. Ms. Simons submitted proof to the Division that she is currently bonded and has also complied with the continuing education requirements.

ACJA § 7-201(E)(8)(b) reads:

*Upon application and payment of any applicable fee for reactivation of certification, required by the applicable section of the ACJA, the board may require the applicant to comply with the following:*

*(1) Submit proof of compliance with the requirements for continuing education;*

*(2) Submit other proof required by the board to:*

*(a) Demonstrate the applicant possesses the skills necessary to practice in the profession or occupation;*

*(b) Demonstrate the applicant remains in compliance with the applicable ACJA sections; and*

*(c) Demonstrate compliance with other requirements for certification.*

*(3) If the applicant for reinstatement engaged in the profession or occupation in another jurisdiction during the time the certificate holder's certificate was inactive, the applicant shall submit all of the following:*

*(a) Proof of practice in the profession or occupation in the other jurisdiction;*

*(b) An affidavit affirming the applicant has not been disciplined in another jurisdiction; and*

*(c) An affidavit affirming the applicant is not subject to discipline or being investigated in another jurisdiction.*

*(4) If the applicant has been inactive for more than one year the board may require the applicant to sit for and pass the applicable examination.*

**It is recommended the Board accept the request and place Cathy Simons on Active Status.**